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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/866,765	05/30/2001	Gregory A. Hodge	**OO-0006	5021
23377 7590 12/23/2008 WOODCOCK WASHBURN LLP CIRA CENTRE, 12TH FLOOR 2929 ARCH STREET PHILADELPHIA, PA 19104-2891				
EXAMINER				
SMITH, CHENEA				
ART UNIT		PAPER NUMBER		
2421				
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12/23/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action
Before the Filing of an Appeal Brief

Application No.

09/866,765

Applicant(s)

HODGE ET AL.

Examiner

CHENEY P. SMITH

Art Unit

2421

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 04 December 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 44-115.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information *Disclosure Statement(s)*. (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/John W. Miller/
Supervisory Patent Examiner, Art Unit 2421

Applicants' arguments are not persuasive.

In response to Applicants' arguments on page 18, lines 13-15 that "Applicants respectfully submit that this recitation of claim 44 is not taught ... Broadwin states", which is in reference to the "wherein the instructions for the set top box configure the set top box to overlay ... " limitation, as claimed, Applicants should note that the portion of Broadwin used to teach "wherein the instructions for the set top box are configured to overlay ... ", was (Broadwin, col 7, lines 34-41, col 5, lines 2-10 and col 4, lines 57-63), and is the same portion that will be used to teach "wherein the instructions for the set top box configure the set top box to overlay ... ", as the Examiner believes that if instructions are configured to perform a task, and the instructions are stored on a device to be executed by a processor, then the device is configured to perform the task. Therefore, Broadwin teaches, "wherein the instructions for the set top box configure the set top box to overlay ... ", as recited.

In response to Applicants' arguments on page 18, lines 13-15 in reference to the limitation "transmitting the broadcast signal to the set top box" where the instructions are included in the broadcast signal, Applicants should note that Broadwin teaches:

combining a video signal (audiovisual content, see col 4, lines 57-63), instructions for the set top box (see col 5, lines 1-10) and an electronic file (see col 5, lines 1-10 and col 6, lines 1-41) together to form a first channel (see col 5, lines 11-14),

combining the first channel with a second channel to form a broadcast signal and transmitting the broadcast signal to the set top box (see col 5, lines 1-23). Therefore, Broadwin discloses "transmitting the broadcast signal to the set top box" where the instructions are included in the broadcast signal.

In response to Applicants' arguments on page 18, lines 21-22 that "While this citation discloses ... it does not disclose how the instructions corresponding to user selections are received", Applicants should note that the features upon which applicant relies (i.e., how the instructions corresponding to user selections are received) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to Applicants' arguments on page 19 in regards to claim 48, Applicants should note that Broadwin discloses interactive information overlaid on the video content that provides a user with the ability to order, i.e., purchase, a product (see Broadwin, col 7, lines 42-63). Therefore, Broadwin reasonably teaches "wherein the first content includes a purchasing screen for purchasing the product on at least a portion of the second content in the video signal".

In response to Applicants' arguments on pages 20-21 regarding claim 50, Applicants should note that Broadwin discloses sending information over a broadcast signal. Fernandez is used to teach an electronic file including information about a current event.